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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,704	01/12/2004	Jason Macari	SUMPT03CIP	9760

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EXAMINER

TRETTTEL, MICHAEL

ART UNIT PAPER NUMBER

3673

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/755,704	Applicant(s) MACARI, JASON	
	Examiner Michael Trettel	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-9, 12-16, 18-23 and 25-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-9, 12-16, 18-23, 25-39 and 50-71 is/are allowed.
- 6) ☒ Claim(s) 40, 42, 44 and 46 is/are rejected.
- 7) ☒ Claim(s) 41, 43, 45, 47-49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

87

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 40, 42, 44, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas (US 2,751,608) in view of Bly (US 5,038,430). Lucas shows a bed side guard assembly that comprises side guards 16, 17 attached to one another by a bottom support frame 15 placed between a mattress and boxspring. The bottom support 15 comprises a pair of telescopically arranged cross tubes formed by tube sections 18, 19, 22 and 20, 21, 23. Tube sections 18, 19 and 20, 21 are attached to the side guards 16, 17 to hold them in a vertical position. Each side guard 16, 17 is formed by a U-shaped frame formed by vertical members 30, 21 and a top cross member 32, with the gap within the frame member being filled by a sheet 33. The tube sections used to form the bottom support 15 are inherently flexible and will bend to some degree when placed under a load, such as when a user of the bed lays upon the mattress. Therefore the bottom support 15 can be considered to be made from a “flexible connecting material”. The side guards 16, 17 do not have a horizontal rigid segment that spans an interior of the frame, but instead use the sheet member 33 as a means for filling the interior of the frame. Bly teaches that it is known in the art to construct a side guard frame as a U-shaped exterior frame which includes at least a pair of telescoping cross members 42, 44 that span the interior of the frame. The use of this type of construction results in a side guard frame that can be telescopically adjusted in length to fit the

Art Unit: 3673

bed upon which it is used, while still remaining rigid enough to prevent a user of the bed from rolling out. Because this is an improvement over the fixed length sideguard used in the Lucas side guard assembly it would have been obvious to the skilled artisan to have constructed the side guards 16, 17 of the Lucas side guard assembly in the fashion taught by Bly.

Response to Arguments

Applicant's arguments filed on April 21, 2005 have been fully considered but they are not persuasive. The applicant has amended claims 40, 42, 44, and 46 to be in independent form, however, these claims were rejected under §103(a) in the Office Action of December 17, 2004. No arguments have been presented regarding the subject matter of these claims in view of the rejection, and as such the claims have been rejected again using the same grounds of rejection earlier presented.

Allowable Subject Matter

Claims 41, 43, 45, and 47-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 2 to 9, 12 to 16, 18 to 23, 25 to 39, and 50 to 71 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

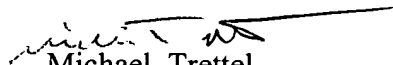
Art Unit: 3673

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (571) 272-7052. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Michael Trettel
Primary Examiner
Art Unit 3673